IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.125 OF 2006
IN
SUIT NO.67 OF 2006

Dr.Ravi B. Shah ....Plaintiff
V/s.
Kiran D. Asher & Ors. ....Defendants

Mr.Shailesh Shah with Mr.S.S. Shah for the Plaintiff.
Mr.Mahendra H. Shah, Senior Counsel with Mr.R.S. Tripathi and Mr.J.R. Vakil i/b J.R. Vakil & Associates for the Defendants.

**CORAM : S.J. VAZIFDAR, J.**
**DATED : 23RD AUGUST, 2006.**

**P.C.** :

1. The suit is filed for a declaration that the Plaintiff is the owner of the suit property ; that Defendant Nos.1 and 2 are not the owners thereof and have no right, title and interest therein of any nature, including the right.

2. The Plaintiff was the owner of the suit property. Thereafter the partnership firm in the name of Mr.R.D. Shah & Company was constituted by a deed of partnership dated 16.9.1996 between the Plaintiff and Defendant No.2. Subsequently on 5.6.2000, Defendant No.1 also became the partner of the said firm.

3. Admittedly the suit property was shown in the Income Tax Returns thereafter as belonging to the partnership firm. Admittedly after the constitution of the partnership firm, the property was not shown by the Plaintiff as belonging to him. In the circumstances in law and in fact the suit property was brought into the partnership firm by the Plaintiff and belonged to the partnership firm.

4. Disputes and difference arose between the Plaintiff on the one hand and Defendant Nos.1 and 2 on the other. Ultimately an Indenture dated 5.6.2000 was executed between Defendant Nos.1 and 2 by which the Plaintiff retired from the said firm on the terms and conditions mentioned therein. The retirement was with effect from 5.6.2000. Under clause 1 of the said deed, Defendant Nos.1 and 2 continued as the partners of the said firm. Clause 3 recorded that all the accounts of the said firm had been settled and the share of the retiring partner stood adjusted. The property remained with the firm. Clauses 4, 5, 7 and 8 of the said deed read as under :-

> "4. It is agreed and declared that the aforesaid partnership business and all its properties, effects, work in progress,outstanding and assets and all other premises are owned and

held by and vested in the Continuing Partners as from the beginning of the 5th day of June, 2000 absolutely freed and released of and from all the share rights, title and interest, claim and demand whatsoever of the Retiring Partner into and upon the same.

5. It is agreed and declared that the share of the Retiring Partner in the said partnership business and all its properties affects, credits, work in progress and assets and all other premises hereinabove mentioned have ceased as from the close of the 5th day of June, 2000 and that the Retiring Partner has now no claim or demand against the said partnership business or against the Continuing Partners on account of his share therein or otherwise howsoever.

7. The Retiring Partner shall not in any way be liable for any of the debts and liabilities o the said partnership consequent upon his retirement from the partnership. The Continuing Partners agree and undertake to pay and discharge all such debts and liabilities of the said Partnership and also to satisfy all other business obligations, undertakings, engagements, contracts and liabilities pertaining to the said partnership and to indemnify and keep indemnified the Retiring Partner against the same and all claims, demands, actions, proceedings, costs, charges and expenses and losses in connection therewith or relating thereto. The Continuing Partners agree and undertake to repay the loan and interest due to the said Shiv Shahi Purnavasan Prakalp Limited and procure a full and complete discharge in favour of the Retiring Partner from the said Shiv Shahi Purnavasan Prakalp Limited in

> respect of the loans obtained by the firm from it and further agree to indemnify and keep the Retiring Partner indemnified from and against all claims, demands, losses and expenses that he may suffer on account of the same.
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> 8. The Retiring Partner doth hereby covenant with the Continuing Partners that the Retiring Partner has not incurred any debts or liability in connection with the partnership business save and except in the ordinary courses of business and which are ordinarily entered in the books of Accounts of the partnership and accordingly if any such debts or liabilities are found to have been incurred by the Retiring Partner, the Retiring Partner shall be responsible to discharge the same."

5. The effect of these two documents is that the property continues to be owned by the said firm.

6. Mr.Shailesh Shah, the learned counsel appearing on behalf of the Plaintiff alleged that contrary to their obligations contained in the deed of retirement, Defendant Nos.1 and 2 have failed and neglected to discharge the liabilities of the firm and as a result thereof, the Plaintiff has been made liable by third parties. Mr.Mahendra Shah, the learned Senior Counsel appearing on behalf of the Defendants denies the same.

7. For the purpose of this order, it is not necessary to decide this question. Under the deed of retirement, the Plaintiff is entitled to be indemnified for all such dues. No such application is made in this suit.

8. Mr.Shailesh Shah submitted that in view of the breach by non-payment of the dues of the firm, the property continues to vest in the Plaintiff. I am unable to understand on what principle of law or fact this submission is founded. The property is owned by the firm. Assuming that there is any breach as alleged, it would not have the effect of transferring the title of the property from the firm to the Plaintiff.

9. It is important to note that it is not even the contention of the Plaintiff that by virtue of the aforesaid breaches, the deed of retirement stood annulled and was void. No declaration to that effect has been sought in the plaint.

10. In the circumstances, the Plaintiff does not have any right, title and/or interest in the suit property.

11. In the circumstances, the Notice of Motion is dismissed.

. The statement made on 20.1.2006 to continue for a period of four weeks from today.